

REMARKS

The above-identified Application has been carefully reviewed with the Office Action of February 25, 2009, the Examiner's comments, and the art references cited therein in mind. In response thereto, Applicants submit the following arguments in support of patentability. Favorable reconsideration is hereby respectfully requested.

The Applicants would initially like to thank the Examiner for the time spent during an interview with the Applicants' attorney, during which the pending claims and the prior art references were discussed. Agreement was reached during the interview that the claims were in condition for allowance over the prior art of record and it is thus believed that this application is condition for allowance.

Claims 1-19 have been rejected on the grounds of non-statutory obviousness type double patenting as being unpatentable over the claims of U.S. Patent No. 7,373,874, the Office taking the position that the claims are merely an obvious variation of the '874 patent.

In response to the double patenting rejection, Applicants submit herewith a terminal disclaimer pursuant to 37 C.F.R. §1.321(c). Applicants have submitted the terminal disclaimer solely to advance prosecution of the application, without conceding that the double patenting rejection is properly based. In filing the terminal disclaimer, Applicants rely upon the rulings of the Federal Circuit that the filing of such a terminal disclaimer does not act as an admission, acquiescence, or estoppel on the merits of the obviousness issue. *See, e.g., Quad Environmental Tech v. Union Sanitary Dist.*, 946 F.2d 870, 874-875 (Fed. Cir. 1991); and *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

CONCLUSION

With the amendments presented herein, it is believed that all the claims remaining in the Application are in condition for allowance. Early and favorable action in this regarding is hereby respectfully requested. Should there be any minor informalities remaining, the Examiner is respectfully requested to call the undersigned attorney so that this case may be passed to issue at an early date.

Respectfully submitted,

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